

TAX INTEREST RATE EFFECTIVE MAY 1, 2008!

The 2008 General Assembly enacted House Bill 704 that made significant changes to how interest is calculated on refunds and assessments. The bill was signed into law by Governor Beshear on April 24th.

Highlights of the new interest provisions are as follows:

Assessments

1. "All taxes payable to the Commonwealth that have not been paid at the time prescribed by statute shall accrue interest at the tax interest rate as determined in accordance with KRS 131.183 (1) until May 1, 2008."

Therefore, from January 1, 2008 through April 30, 2008, interest will accrue on outstanding assessments at the rate of 8%.

2. Beginning on May 1, 2008, all taxes payable to the Commonwealth that have not been paid at the time prescribed by statute shall accrue interest at the tax interest rate as determined in accordance with subsection (1) of this section plus two percent (2%)."

Therefore, beginning May 1, 2008 through December 31, 2008, interest on assessments will accrue at the rate of 10%."

Refunds

Refund requests received prior to May 1, 2008 for returns filed for tax periods with an "interest accrual date" that is prior to May 1, 2008 shall have the interest computed at the "old" interest rate (8% for 2008) through April 30, 2008. Interest will then accrue at the "new" interest rate for such refunds beginning on May 1, 2008. The new rate will be 6% for the remainder of 2008. "Interest accrual date" in relation to refunds is not specifically defined in statute by reference to that exact term but is effectively defined by Section 8 (2)(b)3.(KRS 131.183) of HB 704 for most refunds as follow:

"Effective for refunds issued after the effective date of this Act, **except for the provisions of KRS 138.351, 141.044(2), 141.235(3)**, and subsection (3) of this section, interest authorized under this subsection shall begin to accrue sixty (60) days after the latest of:

- a. The due date of the return;
- b. The date the return was filed;
- c. The date the tax was paid;
- d. The last day prescribed by law for filing the return; or
- e. The date an amended return claiming a refund is filed."

For motor fuel tax refunds issued under **KRS 138.351**, the interest accrual date will continue to be sixty days after the postmark date of the application for refund. The "old" interest rate and "new" interest rate will apply to such motor fuel refunds based on whether or not the sixty days after the postmark date is before or after May 1, 2008.

For refunds issued based on corporation income tax declaration overpayments under the provisions of **KRS 141.044**, the interest accrual date was changed in HB 704 Section 9 to begin ninety days after:

- a. The due date of the return;
- b. The date the return was filed;
- c. The date the tax was paid;
- d. The last day prescribed by law for filing the return; or
- e. The date an amended return claiming a refund is filed.

Refund requests received prior to May 1, 2008 for returns filed for tax periods with an "interest accrual date" that is prior to May 1, 2008 shall have the interest computed at the "old" interest rate (8% for 2008) through April 30, 2008. Interest will then accrue at the "new" interest rate for such refunds beginning on May 1, 2008. The new rate will be 6% for the remainder of 2008.

For refunds of individual income tax, the interest accrual date in **KRS 141.235** was amended in Section 10(3) of the bill to be ninety days after the latest of:

- a. The due date of the return;
- b. The date the return was filed;
- c. The date the tax was paid;
- d. The last day prescribed by law for filing the return; or
- e. The date an amended return claiming a refund is filed

Refund requests received prior to May 1, 2008 for returns filed for tax periods with an "interest accrual date" that is prior to May 1, 2008 shall have the interest computed at the "old" interest rate (8% for 2008) through April 30, 2008. Interest will then accrue at the "new" interest rate for such refunds beginning on May 1, 2008. The new rate will be 6% for the remainder of 2008.

In summary, interest on refunds will be computed under the rules outlined above. For all refund interest calculation issues, it is important to note that the revised law requires that interest be paid upon "any overpayment as defined in KRS 134.580". The definition of "overpayment" was revised in Section 11 of HB 704 to be "the excess of the tax payments made over the correct tax liability determined under the terms of the applicable statute without reference to the constitutionality of the statute."

May 1, 2008